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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,795	04/04/2001	Staffan Folestad	1103326-0660	6487
7370	7590	02/25/2005	EXAMINER	
WHITE & CASE LLP PATENT DEPARTMENT 1155 AVENUE OF THE AMERICAS NEW YORK, NY 10036			TSOY, ELENA	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/806,795

Applicant(s)

FOLESTAD ET AL.

Examiner

Elena Tsoy

Art Unit

1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,4-20,22-25 and 27-53.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Advisory Action

1. The Response filed on February 7, 2005 under 37 CFR 1.116 in reply to the final rejection has been entered and considered but is not deemed to place the application in condition for allowance for the reasons of record as set forth in the Final Office Action mailed on November 8, 2004.

Response to Arguments

2. Applicants' arguments filed September 30, 2004 have been fully considered but they are not persuasive.

(A) Applicants argue that claim 10 of '792 can be properly construed when considered together with claims 9 and 11 in light of disclosure.

The Examiner respectfully disagrees with this argument. Claim 10 relates to invention different from claims 9 and 11 because each of claims 9, 10, and 11 is directed to different embodiments of claim 1.

(B) Applicants argue that although claim 10 of '792 specifies when the spectrometric measurement is performed, the claim does not disclose or suggest that the spectrometric measurement is performed on a sample while the same sample is being coated. This interpretation is fully supported by the corresponding disclosure appearing at column 3, lines 41-44 of the specification: "The measurements can be performed during the actual coating process, e.g. within a coating vessel or by taking out a sample from the coating vessel without interrupting or interfering with the coating process". The disclosure that the spectrometric measurement can be performed by removing a sample from the coating vessel during the actual coating process is convincing proof that the expression "actual coating process", as used in claim

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10, is applicable in a general sense to the manufacturing process itself and not to the coating of a specific sample.

The Examiner respectfully disagrees with this argument. The expression “actual coating process”, as used in claim 10, is applicable not in a general sense to the manufacturing process itself, but to the coating of a specific sample, because claim 10 specifically recites that the spectrometric measurement is performed “on a *sample* within a coating vessel during the actual coating process”. Moreover, nowhere the claims and the specification disclose that performing the spectrometric measurement on a sample within a coating vessel during the actual coating process should **exclude** performing the spectrometric measurement on a sample within a coating vessel *while coating is being formed*. Therefore, claim 10 of ‘792 reads on limitations of claim 1 of current application.

(B) Applicants argue that Drennen does not disclose or suggest coating a particle and measuring the coating on the same particle at the same time and at the same spatial location.

Applicants are reminded that Drennen, III et al was cited not to show that coating a particle and measuring the coating on the same particle could be performed at the same time and at the same spatial location, but to show that a fluidized bed could be used for coating pharmaceutical product such as drug unit (particle), and a process of coating can be monitored on-line on a single particle which is fluidized on an upwardly directed flow but retrieving the particle into a probe (not while fluidized) (See Fig. 2; column 2, lines 1-5, 65-67; column 3, lines 44-48, 60-67; column 4, lines 36-38).

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy
Primary Examiner
Art Unit 1762

ELENA TSOY
PRIMARY EXAMINER
ETsoy

February 24, 2005